

117TH CONGRESS
2D SESSION

S. 3440

To amend the Federal Food, Drug, and Cosmetic Act and the Defense Production Act of 1950 to prohibit the Federal Government from limiting State access to key therapies, such as monoclonal antibodies, and from prioritizing Federal contracts over State contracts relating to purchasing supplies to combat the COVID–19 pandemic.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2022

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Federal Food, Drug, and Cosmetic Act and the Defense Production Act of 1950 to prohibit the Federal Government from limiting State access to key therapies, such as monoclonal antibodies, and from prioritizing Federal contracts over State contracts relating to purchasing supplies to combat the COVID–19 pandemic.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ENSURING FAIRNESS FOR STATE CONTRACTS**
 2 **RELATING TO SUPPLIES TO COMBAT COVID-**
 3 **19 PANDEMIC.**

4 (a) TREATMENT UNDER DEFENSE PRODUCTION ACT
 5 OF 1950.—Section 101 of the Defense Production Act of
 6 1950 (50 U.S.C. 4511) is amended—

7 (1) in subsection (a), by striking “The Presi-
 8 dent” and inserting “Except as provided by sub-
 9 section (e), the President”; and

10 (2) by adding at the end the following:

11 “(e) EXCEPTION FOR STATE CONTRACTS RELATING
 12 TO COVID–19 PANDEMIC.—The President may not exer-
 13 cise the authority provided by subsection (a) on or after
 14 the date of the enactment of this subsection to prioritize
 15 the performance of contracts or orders of the Federal Gov-
 16 ernment relating to the purchase of supplies to combat
 17 the COVID–19 pandemic over the performance of con-
 18 tracts or orders of the government of a State or territory
 19 or possession of the United States relating to the purchase
 20 of such supplies.”.

21 (b) TREATMENT UNDER FEDERAL FOOD, DRUG,
 22 AND COSMETIC ACT.—Section 564(j) of the Federal Food,
 23 Drug, and Cosmetic Act (21 U.S.C. 360bbb–3(j)) is
 24 amended by adding at the end the following:

25 “(5) Nothing in this section or any other provi-
 26 sion of law shall be construed to authorize the Sec-

1 retary to ration a drug authorized for use under this
2 section, limit or restrict access to such a drug, or
3 otherwise control the quantity of such a drug made
4 available for or distributed to any State or territory,
5 including by imposing any limitation on distribution
6 of such a drug to governmental entities, such as re-
7 quiring a State- and territorial-coordinated distribu-
8 tion system or similar distribution system.”.

9 (c) USE OF COVID–19 RELIEF FUNDS TO PUR-
10 CHASE SUPPLIES FOR STATES.—

11 (1) IN GENERAL.—Notwithstanding any other
12 provision of law, a State or territory or possession
13 of the United States may use funds described in
14 paragraph (2) to purchase supplies to combat the
15 COVID–19 pandemic that the State, territory, or
16 possession was unable to purchase before the date of
17 the enactment of this Act because of the invocation
18 by the President of the authority to prioritize con-
19 tracts and orders under section 101 of the Defense
20 Production Act of 1950 (50 U.S.C. 4511).

21 (2) FUNDS DESCRIBED.—Funds described in
22 this paragraph are funds made available to a State
23 or territory or possession of the United States pur-
24 suant to any of the following Acts and available for

1 obligation as of the date of the enactment of this
2 Act:

3 (A) The Coronavirus Preparedness and
4 Response Supplemental Appropriations Act,
5 2020 (Public Law 116–123; 134 Stat. 146).

6 (B) The Families First Coronavirus Re-
7 sponse Act (Public Law 116–127; 134 Stat.
8 178).

9 (C) The Coronavirus Aid, Relief, and Eco-
10 nomic Security Act (Public Law 116–136; 134
11 Stat. 281).

12 (D) The Paycheck Protection Program and
13 Health Care Enhancement Act (Public Law
14 116–139; 134 Stat. 620).

15 (E) The Consolidated Appropriations Act,
16 2021 (Public Law 116–260).

17 (F) The American Rescue Plan Act of
18 2021 (Public Law 117–2).

19 (G) Any other Act providing funding relat-
20 ing to the COVID–19 pandemic.

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